IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 18824 of 2007(N)

PETITIONERS:

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1. MAVOOR GRMA PANCHAYATH,
REPRESENTED BY ITS PRESIDENT, MAVOOR,
KOZHIKODE DISTRICT.

2. N.MANOJ KUMAR, S/O.NARAYANAN,
NALANKANDATHIL HOUSE, POST KANNIPARAMBIL,
VIA MAVOOR, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

1.THE OMBUDSMAN,
LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM.

2. K.SREENIVASAN,
KOTTAPARAMBATH VEEDU, KANNIPARAMPA, MAVOOR,
KOZHIKODE DISTRICT.

*ADDL.R3.THE SECRETARY, MAVOOR GRAMA PANCHAYAT,
MAVOOR, KOZHIKODE DISTRICT.

*ADDL. R3 IS IMPLEADED AS PER THE ORDER DATED 18.7.2007
IN I.A.NO.9832 OF 2007.

R3 BY ADV. SMT.ARLISS TRENCY ANTONY
R2 BY ADV.SRI.B.MOHANLAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 18824/07)

PETITIONERS' EXTS.:

EXT.P1: COPY OF THE ORDER IN O.P.NO.27/07 BEFORE THE HON'BLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 16.4.2007.

EXT.P2: COPY OF THE PETITION FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.

EXT.P3: COPY OF THE STATEMENT FILED BY THE PETITIONER/PANCHAYAT BEFORE THE HONOURABLE OMBUDSMAN DATED 20.3.07.

EXT.P4: COPY OF THE MINUTES OF THE GRAMA SABHA DATED 2.9.2006 OF MAVOOR GRAMA PANCHAYAT WARD NO.15 GRAMA SABHA.

EXT.P5: COPY OF THE APPLICATION SUBMITTED BY CHAKKI.

EXT.P6: COPY OF THE PUBLIC NOTICE ISSUED BY THE CONVENOR OF WARD NO.15 ABOUT THE GRAMA SABHA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 18824 OF 2007

Dated this the 19th day of September, 2007

JUDGMENT

Whether it is necessary to serve notices individually, regarding Grama Sabha meetings convened under Section 3(3) of the Panchayat Raj Act is the important question which arises for decision in this Writ Petition.

2. Ext.P1 order of the Hon'ble Ombudsman for Local Self Government Institutions under which the Ombudsman directed the Panchayat to cancel the beneficiary list and the decisions taken in the Grama Sabha of Ward No.15 of the petitioner-Panchayat is under challenge in this Writ Petition initiated by the Panchayat and the Convenor of the beneficiary committee, i.e., Convenor of the Grama Sabha of Ward No.15. The complaint before the Ombudsman was Ext.P2. The allegation in Ext.P2 is that the beneficiary list prepared by the Grama Sabha in so far as it enlists a lady by name Alumkandi Chakky who is alleged to be not eligible for the benefit under the House Construction Scheme since her daughter Kalyani has received a total amount of Rs.4,50,000/- by way of compensation from the Gwalior Rayons Company, is illegal. When the complaint came up before the

Ombudsman, the Ombudsman would enquire of the complainant (the 2nd respondent herein) as to why the objection regarding Chakki was not raised before the Grama Sabha. The 2nd respondent would answer that he was not having any notice regarding the convening of the Grama Sabha. On hearing the above answer, the Ombudsman would seek an explanation from the Secretary of the Panchayat who was present and the Secretary conceded that individual notices were not served even on the heads of the families constituting the Grama Sabha. Observing that it is the constitutional mandate of the Panchayat and the Convenor of the Grama Sabha to serve individual notices to all members of the Sabha regarding the Grama Sabha meetings and further that giving of such individual notices is the fundamental duty as far as the Panchayat Member is concerned, the learned Ombudsman went on to pass the impugned order directing the Panchayat to cancel all the beneficiary lists covered by Ext.P4 minutes in which the item pertaining to Chakki is item No.14.

3. The 2nd respondent has filed a detailed counter affidavit justifying the order of the Ombudsman. The counter affidavit even goes beyond Ext.P2 complaint and submits that all the decisions in Ext.P4 are vitiated since undeserving persons have been conferred with benefits.

4. Heard Mr.P.V.Kunhikrishnan, learned counsel for the petitioners and Mr.B.Mohanlal, counsel for the 2nd respondent.

5. My attention was drawn by Mr.Kunhikrishnan to Rule 4 of the Kerala Panchayat Raj (Procedure for convening the Grama Sabha) Rules, 1995 and also to Rule 4 of the Kerala Panchayat Raj (Manner of publication of notification or notice) Rules, 1996. Counsel would argue that service of individual notices on the Grama Sabha members is not envisaged by those Rules. Referring to Ext.P6 public notice, learned counsel submitted that requisite notice has already been given. Counsel also submitted that notices were affixed in public places and there was loud speaker announcement also. Counsel also submitted that the Convenor's version that he tried his best to inform the members of the Grama Sabha of the proposed meeting is not under serious challenge.

6. Mr.Mohanlal, counsel for the petitioner would draw my attention to Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996 and particularly to Rule 3 therein. According to him, in as much as the Kerala Panchayat Raj (Procedure for Convening the Grama Sabha) Rules, 1995 do not prescribe any particular mode for service of individual notice to Grama Sabha meetings, the proper rule to be followed is the Kerala Panchayat Raj (Manner of Service of Notices)

Rules, 1996.

7. Rule 3 of the Kerala Panchayat Raj(Manner of Service of Notices) Rules, 1996 provides as follows:

> "3. Serving of notice:- (1) In case the Act or rules or bye-laws made thereunder requires the Panchayat to serve any notice or document to a person, such service or sending shall, unless otherwise provided in the Act or rules or bye-laws made thereunder, be done,-
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> (a) by service or sending of notice or document to such person; or"
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> (rest being irrelevant is omitted.)

It is true that as per Rule 3(a) of the Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996, service of individual notice to the person who is intended to be served with notice has been contemplated. But Rule 3 of the Kerala Panchayat Raj (Manner of Service of Notices) Rules, 1996 applies only in cases where the Panchayat Raj Act or Rules or Bye-laws made thereunder requires the Panchayat to serve notices to a person. The Panchayat Raj Act does not insist on service of notice of Grama Sabha meetings to the persons who constitute the Grama Sabha as per Section 3(2) or to the head of

the families within the area of the Grama Sabha. The relevant Rule in my opinion is Rule 4 of the Kerala Panchayat Raj (Procedure for convening the Grama Sabha) Rules, 1995 which is quoted hereunder:

> "4. Date and Time for the meeting of the Grama Sabha:- The President of the Village Panchayat shall, in consultation with the Convenor of the Grama Sabha concerned, fix the date and time between 8 am and 6 pm. And the Secretary of the Village Panchayat concerned shall publish the place date and time of the meeting, so fixed, by affixing notice in appropriate public places, Government Offices, schools in the area of the Grama Sabha and in the office of the Village Panchayat. The Convenor concerned shall try to inform the members of the Grama Sabha the place, date and time of the meeting and cause them to attend the meeting (underlining supplied)."

Thus under the Rule what is required is only that there shall be publicity regarding the proposed meeting of the Grama Sabha and that the Convenor concerned shall try to inform the members of the Grama Sabha, the place, date and time of the meeting and cause them to attend the meeting. What is contemplated is publication of the date, place and time, by affixing notice in public places, Government Offices,

Schools in the area of the Grama Sabha and in the office of the Panchayat. The mandate to the Convenor is only that he shall try to inform the members of the venue and time of the meeting and also cause them to attend the meeting. Rule 4 of the Kerala Panchayat Raj (Procedure for convening the Grama Sabha) Rules, 1995 being the apposite Rule, the question to be considered is whether that Rule has been complied with in the instant case. The materials available and placed on record by the petitioners will show that there has been adequate compliance with that rule. Ext.P6 is copy of the notice issued by the Convenor of the Grama Sabha regarding the Grama Sabha meetings which is proposed to be held on 2.9.06 at 3 PM in a local school. The agenda of the meeting is clearly shown in Ext.P6. The claim that the notices were affixed in important places within the area of the Grama Sabha and propagated through loud speaker is not challenged. Considering the Pragmatic difficulties in serving individual notices on all the members of the Grama Sabha which may consists of thousands of people the learned Ombudsman is not justified in insisting on service of individual notices on all the members when neither the statute nor the relevant rule requires such service. The meeting in question, in my opinion was convened with due notice to the Grama

Sabha members and the learned Ombudsman was not justified in cancelling the beneficiary lists and all the decisions taken in the meeting and directing the consideration of the beneficiary lists in the next Grama Sabha. It is also to be noticed in this context that the statutory quorum for Grama Sabha meeting is only 10% of the total number of voters and obviously quorum has been fixed so taking into account the pragmatic difficulties which will arise if a higher quorum is insisted upon.

8. There is another reason why I am unable to sustain Ext.P1 order. Ext.P2 complaint was specifically directed against the decision which is mentioned as item No.14 in Ext.P14 minutes, i.e., the decision to give the benefit to Smt.Chakki. It was not proper to set aside all the decisions as per Ext.P4 on the basis of Ext.P2 complaint. Of course, in his verbal submissions before the Ombudsman and through the counter affidavit filed by him before this court, the 4th respondent has attempted to say that all the decisions in Ext.P4 are vitiated. But in my opinion the 2nd respondent having confined his complaint against Smt.Chakki alone in Ext.P2, is not entitled to challenge the other decisions in Ext.P4.

9. I set aside Ext.P1 to the extent it pertains to the decisions other than item No.14 in Ext.P4 minutes. There will be a direction to the Ombudsman to take fresh decision on Ext.P2 complaint confining the

enquiry into the question whether there is any infirmity about the decision which is mentioned as item No.14 in Ext.P4 with notice to the parties. The Ombudsman will ensure that notice is also issued to Smt.Chakki and the 2nd respondent herein before fresh orders are passed.

The Writ Petition is allowed of as above. No costs.

PIUS C.KURIAKOSE, JUDGE

srd/btt